

ANTHONY COLEMAN,	)	Case No.: 2:11-cv-00178-GMN-LRL
	)	
Plaintiff,	)	<b>ORDER</b>
vs.	)	
	)	
AMERICAN HOME MORTGAGE	)	
SERVICING, INC. et al.,	)	
	)	
Defendants.	)	
	)	

Plaintiff requested that this Court enter a default judgment against Defendants AHMSI, Power Default, MERS and American Home Mortgage Acceptance Inc.<sup>1</sup> because these Defendants did not serve and Answer or Motion upon the Plaintiff or Plaintiff's attorney on or before June 10, 2011. (ECF No. 15). Defendants filed a Motion to Dismiss Plaintiff's Complaint on June 9, 2011. (ECF No. 8).

Rule 12(b) motions to dismiss must be filed before a responsive pleading and in effect toll the time to file an answer until the court has ruled on the pending motion. Fed. R. Civ. P. 12(a) & (b). So long as the Rule 12(b) motion is served before the expiration of the 21 days required by Rule 12(a) to serve an answer or motion there is no defect. Service of a 12(b) motion can be done by mailing it to a person's last known address, in which event service is complete upon mailing. Fed. R. Civ. P. 5(b)(2)(C). Defendants have attached a certificate of

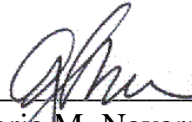
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1 service to their Motion to Dismiss showing that they mailed the motion to Plaintiff at his last  
2 known address. Accordingly, Defendants have complied with the requirements of Rule 12(a).

3 IT IS HEREBY ORDERED that Defendants American Home Mortgage Servicing, Inc.,  
4 Power Default Services, Inc., and Mortgage Electronic Registration Systems' Motion to Strike  
5 Plaintiff's Motion for Default Judgment (ECF No. 18) is **GRANTED**.

6 Plaintiff Anthony Coleman's Motion for Entry of Default Judgment (ECF No. 15) is  
7 **HEREBY STRIKEN**.

8 DATED this 28th day of June, 2011.

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12 Gloria M. Navarro  
13 United States District Judge  
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